

of swallows to the passage. This suitability is indicated by copious literary evidence, some of early date, as well as by some virtually timeless aspects of swallow ethology. The swallows are even more appropriate than the cicadas as paradigms for the musical but impractical Amphion, for their musicianship was proverbial but often disparaged, as witness the numerous literary references to their twittering.¹⁰ One passage which seems particularly to the point here, since it refers to Athenian poetasters, is Aristophanes, *Frogs* 92f.

ἐπιφυλλίδες ταῦτ' ἐστὶ καὶ στωμύλματα,
χελιδόνων μουσεία, λωβηταὶ τέχνης

There is, moreover, another feature of swallows' behaviour which makes them even more apposite to the context in which Eubulus has put them. Unlike the cicadas, the swallows really are conspicuous for gulping breezes (κάπτοντες αὔρας) in virtually a literal sense, as, open-mouthed, they feed on air-borne insects which are often invisible to the observer on the ground.¹¹

University of Manitoba

RORY B. EGAN

¹⁰ See Thompson, *Glossary*, pp. 320f.

¹¹ κάπτω is actually used of birds eating insects at Aristophanes, *Birds* 245.

THE LENGTH OF THE SPEECHES ON THE ASSESSMENT OF THE PENALTY IN ATHENIAN COURTS

The time-limits imposed by the κλεψύδρα on speakers in Athenian trials have been much discussed, but a valuable distillation of the ancient evidence and modern interpretations of it has recently been made by P. J. Rhodes, *A Commentary on the Aristotelian Athenaion Politeia* (1981), pp. 719–28. He prudently states his own conclusions in a cautious manner, but I find them convincing. One khous of water took 3 minutes to run out; this is indicated by the length of time taken by the κλεψύδρα found in the Agora (first published by S. Young, *Hesp.* 8 [1939], 274–84), which holds 2 khoes and takes 6 minutes, and it is also consistent with the evidence of Aiskhines about the διαμετρημένη ἡμέρα. In a 'measured-through day', used only for public cases, the total amount of time allowed for the speeches in a trial was 11 amphoreis (Ais. 2.126), equivalent to 132 khoes, taking 396 minutes; one third of this time was allocated to the prosecution, one third to the defence, and one third to the speeches on the assessment of the penalty (Ais. 3.197). Time taken for other proceedings, including the allocation of jurors to courts, voting, and payment of jurors at the end of the day (this last is not mentioned by Rhodes, but it was surely completed well before dusk, because the jurors had time to go shopping afterwards; cf. Ar. *Wasps* 303–11, 788–9), was additional. For private cases, figures are given by AP 67.2: if the sum at issue was more than 5000 drachmas, the prosecutor and defendant each had 10 khoes for the first speech and 3 khoes for the second speech; if between 5000 and 1000 drachmas (2000 according to Hommel's restoration; cf. Rhodes, p. 721), 7 khoes and 2 khoes; if less than 1000 (or 2000) drachmas, 5 khoes and 2 khoes; in a *diadikasia* in which there were no second speeches, each claimant had 6 khoes for his one speech.

One further figure is given in AP, and this is the point at which I think it is possible to add to what Rhodes has said. In almost the last sentence of the text we read: ἡ δὲ τίμησίς ἐστιν πρὸς ἡμίχουν ὕδατος ἐκατέρω. 'The assessment is made to half a khous of water for each party' (AP 69.2). This means that, when the verdict had been given for the prosecutor in a type of case for which no penalty was fixed by law, the

prosecutor had 1½ minutes in which to make his proposal for a penalty or damages and give the reasons for it, and the defendant had 1½ minutes in which to propose an alternative, with his arguments or pleas for mercy. Is this credible?

It plainly conflicts with the evidence of Aiskhines that in a public case a total of 44 khoes was available for the assessment of the penalty. The explanation usually given (cf. Rhodes, p. 734) is that *AP* 69.2 must refer to private cases only. But no one seems to have noticed that this explanation is precluded by a passage about the behaviour of Onetor at the trial of Aphobos.

ἀλλὰ καὶ κατεγνωσμένης ἤδη τῆς δίκης, ἀναβὰς ἐπὶ τὸ δικαστήριον ἐδεῖθ' ἱκετεύων ὑπὲρ αὐτοῦ καὶ ἀντιβολῶν καὶ δάκρυσι κλάων τάλαντον τιμῆσαι, καὶ τούτου αὐτὸς ἐγίγνετ' ἐγγυητής.

But even after the case had already been decided against the defendant, he (Onetor) went up in front of the court and begged it on his (Aphobos') behalf, supplicating and entreating and weeping tears, to assess the damages at a talent, and offered to stand surety for this amount himself.

(Dem. 30.32)

This was a private case, the famous prosecution brought by Demosthenes on coming of age against his guardian Aphobos for failure to hand over the property left by his father (the case for which the extant speeches Dem. 27 and 28 were composed). The jury gave a verdict for Demosthenes; after that (*κατεγνωσμένης ἤδη τῆς δίκης*) followed the assessment of the amount which Aphobos should pay. Demosthenes claimed 10 talents. The alternative proposed by Aphobos was one talent. Aphobos himself must have spoken, even if only briefly, to make his proposal; but the passage just quoted shows that his brother-in-law Onetor spoke too, and at some length, with entreaties and an offer to stand surety. These two speeches cannot both have been made in a total of 1½ minutes. In fact there must have been many cases in which the assessment required speeches of some length. Even if the prosecutor included details of his claim in his speech in the main part of the trial (as is done in Dem. 27) and so had little more to say in his speech on the assessment, the defendant, who had previously been maintaining that he should pay nothing at all and had failed to convince the jury of that, would often need to develop a new line of argument to persuade the jury that he should pay less than the prosecutor claimed.

I conclude that *ἡμίχουν* in *AP* 69.2 is wrong. We should not seek to save it by saying that a khous of water must, after all, have lasted much longer than 3 minutes; the combination of Ais. 2.126 with the *κλεψύδρα* found in the Agora provides good evidence that the figure of 3 minutes is at least approximately correct. We could postulate that the time-limit was changed in the middle of the fourth century, between the trial of Aphobos and the composition of *AP*; but that hypothesis is not very attractive, since there is no obvious reason why the allowance of time should have been drastically reduced at that date. Instead it is more likely that there is corruption in the text of *AP*.

The emendation which I should like to suggest for consideration is *πρὸς ἥμισυ τοῦ ὕδατος*, meaning that in all cases the time allowed for the speeches on the assessment was half the time allowed for the speeches in the main trial. Thus in the case of Aphobos, in which the sum at issue was more than 5000 drachmas, the defendant's time for speaking on the assessment would have been half of 13 khoes, working out at nearly 20 minutes, enough time for Aphobos to put forward his proposal of one talent and for Onetor to shed his tears too. A particular advantage of this emendation is that it gives exactly the same proportion of time to assessment in private cases as in public cases, and relieves us of the need to ask why there is no separate mention of public cases in *AP* 69.2.